

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 9715 of 1995

For Approval and Signature:

Hon'ble MR.JUSTICE S.K.KESHOTE

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1. Whether Reporters of Local Papers may be allowed to see the judgements?
2. To be referred to the Reporter or not?
3. Whether Their Lordships wish to see the fair copy of the judgement?
4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder?
5. Whether it is to be circulated to the Civil Judge?

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YASHBIR SINGH YADAV S/O GAJRAJSINGH YADAV

Versus

GOVT. OF INDIA

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Appearance:

MR RAM NANDAN SINGH for Petitioner

MR JD AJMERA for Respondent No. 2

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CORAM : MR.JUSTICE S.K.KESHOTE

Date of decision: 12/11/97

ORAL JUDGMENT

#. The petitioner, by this Special Civil Application, prayed for direction to respondents to give him last change to prove himself to become a soldier. Further prayer has been made to set aside the order of respondent No.3, annexure 'I' dated January 1995 and that of respondent No.2, annexure 'L' dated 2.8.95.

#. It is to be noticed that in the prayer clause, annexure 'L' has wrongly been mentioned as annexure 'K'. Under the order annexure 'I' the petitioner was declared to be unsuitable to be retained in Border Security Force (BSF) and was ordered to be weeded out with effect from 6.1.95 (a.m.). Under the order annexure 'L', dated 2nd August 1995, the representation made by petitioner to take him back in service was rejected.

#. The learned counsel for the petitioner contended that the action of respondents not to give further change to the petitioner to pass Platoon Commander Test is highly arbitrary and unjustified. It has next been contended that in the second attempt, the petitioner failed in examination as he was put in odd conditions. That aspect of the matter has not been considered and the petitioner was weeded out from the BSF.

#. On the other hand, the learned counsel for respondents contended that the action of the respondents to weed out the petitioner from BSF was not illegal or arbitrary. The petitioner failed in Platoon Commander Test after which he was given change to appear in Coy Commander Test, but in the second chance also he failed and as such he has rightly been declared to be unfit for the BSF.

#. I have given my thoughtful considerations to the submissions made by learned counsel for the parties.

#. In the document filed by petitioner at page 33 of this Special Civil Application there is a provision for weeding out recruits. This provision provides that in respect of weeding out of recruits, training institutions should be strict in their periodical checks to assess suitability of a trainee and in the event a recruit is unlikely to make a good constable of the Force, he should be weeded out forthwith. Three points are suggested under the said provision in this regard, out of which the relevant one for the purpose of present case reads as under:

After failure in Pl Comdr's test, having been given written warning, if the recruit fails in Coy Comdr's test, he should be discharged.

From annexure 'I' to this Special Civil Application, I find that the petitioner failed in the Platoon Commander Test as well as Coy Commander Test. So the case of the petitioner is clearly covered under the aforesaid provision of weeding out of recruits. From the reply to

the Special Civil Application, I find further that in the application form submitted by petitioner for recruitment, there was one condition that he was liable to be discharged during the first two years of service, if he was not likely to become an efficient member of the Force. The respondent No.2 had power to weed out the petitioner on his failure to pass the Platoon Commander Test and after written warning, the Coy Commander Test. Admittedly, the petitioner failed in both the tests and as such, the respondents have not committed any illegality in weeding him out from the services of the BSF. It is a different matter that the petitioner may give any explanation but this Court cannot be oblivious of the fact that despite of giving the opportunity, he could not pass the Coy Commander Test also.

#. Taking into consideration the totality of the facts of this case, I do not find any substance in this Special Civil Application and the same is therefore dismissed. Rule discharged. Interim relief, if any, granted by this Court stands vacated. No order as to costs.

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(sunil)